

ORDINANCE No. 118107

COUNCIL BILL No. 111215

AN ORDINANCE relating to domestic violence,
amending Sections 12A.06.120, 12A.06.160,
12A.06.165, 12A.06.170 and 12A.06.195 and
adding a section to Chapter 12A.06 of the
Seattle Municipal Code

COMPTROLLER FILE No. _____

Introduced: APR 22 1996	By: NOLAND
Referred: APR 22 1996	To: PUBLIC SAFETY COMMITTEE
Referred:	To:
Referred:	To:
Reported: APR 29 1996	Second Reading: APR 29 1996
Third Reading: APR 29 1996	Signed: APR 29 1996
Presented to Mayor: APR 30 1996	Approved: MAY - 3 1996
Returned to City Clerk: MAY - 3 1996	Published: full
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

me
Law Department

The City of Seattle--Legislative

INDEXED

REPORT OF COMMITTEE

Honorable President:

Your Committee on _____

to which was referred the within Council Bill No. _____
report that we have considered the same and respectfully recommend

Passed Public Safety 3-0 4/26/96

Full Council vote 8

Committee Chair

ORDINANCE

118107

1 AN ORDINANCE relating to domestic violence, amending Sections
2 12A.06.120, 12A.06.160, 12A.06.165, 12A.06.170 and
3 12A.06.195 and adding a section to Chapter 12A.06 of the
4 Seattle Municipal Code.

5 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

6 Section 1. Section 12A.06.120 of the Seattle Municipal
7 Code (Ordinance 102843 § 12A.04.135, as last amended by
8 Ordinance 117673 § 1) is further amended as follows:

9 **12A.06.120 Domestic violence defined.**

10 A. Unless the context requires otherwise, the following
11 terms shall have the following meanings as used in this chapter:

12 1. "Family or household member" means spouses,
13 former spouses, persons who have a child in common regardless of
14 whether they have been married or have lived together at any
15 time, adult persons related by blood or marriage, adult persons
16 who are presently residing together or who have resided together
17 in the past, persons sixteen (16) years of age or older who are
18 presently residing together or who have resided together in the
19 past and who have or have had a dating relationship, persons
20 sixteen (16) years of age or older with whom a person
21 ((respondent)) sixteen (16) years of age or older has or has had
22 a dating relationship, and persons who have a biological or
23 legal parent-child relationship, including stepparents and
24 stepchildren and grandparents and grandchildren.

25 2. "Dating relationship" means a social relationship
26 of a romantic nature. Factors that the court may consider in
27 making this determination include: (i) the length of time the
28 relationship has existed; (ii) the nature of the relationship;
and (iii) the frequency of interaction between the parties.

3. "Domestic violence" means a crime committed by
one family or household member against the person or property of
another family or household member.

4. "Court" includes superior, district and municipal
courts of the State of Washington.

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5. "Judicial day" does not include Saturdays, Sundays, or legal holidays.

6. "Victim" means family or household member who has been subjected to domestic violence.

Section 2. Section 12A.06.160 of the Seattle Municipal Code (Ordinance 111857 § 3, as last amended by Ordinance 117673 § 4) is further amended as follows:

12A.06.160 Petition for protection orders.

There shall exist an action known as a petition for an order for protection in cases of domestic violence.

A. A petition for relief shall allege the existence of domestic violence, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought. Petitioner and respondent shall disclose the existence of any other litigation concerning the custody or residential placement of a child of the parties as set forth in RCW ((26.26.090)) 26.27.090 and the existence of any other restraining, protection or no contact order between the parties.

B. A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties except in cases where the court realigns the petitioner and respondent in accordance with Section 12A.06.165 D.

C. Upon receipt of the petition, the court shall order a hearing which shall be held not later than fourteen (14) days from the date of the order. The court may schedule a hearing by telephone pursuant to local court rule, to reasonably accommodate a disability, or in exceptional circumstances to protect a petitioner from further acts of domestic violence. The court shall require assurances of the petitioner's identity before conducting a telephonic hearing. Except as provided in RCW 26.50.085 and RCW 26.50.123 ((Washington Laws of 1995, chapter

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1 246, section 15)), personal service shall be made upon the
2 respondent not less than five (5) court days prior to the
3 hearing. If timely personal service cannot be made, the court
4 shall set a new hearing date and shall either require additional
5 attempts at obtaining personal service or permit service by
6 publication as provided by RCW 26.50.085 or service by mail as
7 provided in RCW 26.50.123 (~~Washington Laws of 1995, chapter~~
8 ~~246, section 15~~). If the court permits service by publication
9 or by mail, the court shall set the hearing date not later than
10 twenty-four (24) days from the date of the order. The court may
11 issue an ex parte order for protection pending the hearing as
12 provided in Section 12A.06.170, RCW 26.50.085 and RCW 26.50.123
13 (~~Washington Laws of 1995, chapter 246, section 15~~)).

14 Section 3. Section 12A.06.165 of the Seattle Municipal
15 Code (Ordinance 111857 § 4, as last amended by Ordinance 117673
16 § 5) is further amended as follows:

17 **12A.06.165 Protection order -- Relief.**

18 A. Upon notice and after hearing, the court may provide
19 relief as follows:

20 1. Restrain the respondent from committing acts of
21 domestic violence;

22 2. Exclude the respondent from the dwelling which
23 the parties share, from the residence, workplace, or school of
24 the petitioner, or from the daycare or school of a child;

25 3. On the same basis as is provided in Chapter 26.09
26 RCW, the court shall make residential provision with regard to
27 minor children of the parties. However, parenting plans as
28 specified in Chapter 26.09 RCW shall not be required;

4. Order the respondent to participate in batterers'
treatment;

5. Order other relief as it deems necessary for the
protection of the petitioner and other family or household
members sought to be protected, including orders or directives

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to a peace officer;

1 6. Require the respondent to pay the administrative
2 court costs and service fees, as established by the City
3 Council, and to reimburse the petitioner for costs incurred in
4 bringing the action, including a reasonable attorney's fee;

5 7. Restrain the respondent from having any contact
6 with the victim of domestic violence or the victim's children or
7 members of the victim's household;

8 8. Require the respondent to submit to electronic
9 monitoring. The order shall specify who shall provide the
10 electronic monitoring services and the terms under which the
11 monitoring must be performed. The order also may include a
12 requirement that the respondent pay the costs of the monitoring.
13 The court shall consider the ability of the respondent to pay
14 for electronic monitoring;

15 9. Consider the provisions of Section 12A.06.195;

16 10. Order possession and use of essential personal
17 effects. The court shall list the essential personal effects
18 with sufficient specificity to make it clear which property is
19 included; and

20 11. Order use of a vehicle.

21 B. If a restraining order restrains the respondent from
22 contacting the respondent's minor children, the restraint shall
23 be for a fixed period not to exceed one (1) year. With regard
24 to other relief, if the petitioner has petitioned for relief on
25 his or her own behalf or on behalf of the petitioner's family or
26 household members or minor children, and the court finds that
27 the respondent is likely to resume acts of domestic violence
28 against the petitioner or the petitioner's family or household
members or minor children when the order expires, the court may
either grant relief for a . . . ed period or enter a permanent
order for protection. If the petitioner has petitioned for
relief on behalf of the respondent's minor children, the court

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shall advise the petitioner that if the petitioner wants to continue protection for a period beyond one (1) year the petitioner may either petition for renewal pursuant to the provisions of this section or may seek relief pursuant to the provisions of Chapter 26.09 or 26.26 RCW.

C. If the court grants an order for a fixed time period, the petitioner may apply for renewal of the order by filing a petition for renewal at any time within the three (3) months before the order expires. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal the court shall order a hearing which shall be not later than fourteen (14) days from the date of the order. Except as provided in RCW 26.50.085, personal service shall be made on the respondent not less than five (5) days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided in RCW 26.50.085 or by mail as provided in RCW 26.50.123. If the court permits service by publication or by mail, the court shall set the new hearing date not later than twenty-four (24) days from the date of the order. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in Section 12A.06.170. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's children or family or household members when the order expires. The court may renew the protection order for another fixed time period or may enter a permanent order as provided in this section. The court may award court costs, service fees, and reasonable attorneys' fees as provided in subsection A6 of this section.

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1 D. In providing relief under this chapter, the court may
2 realign the designation of the parties as "petitioner" and
3 "respondent" where the court finds that the original petitioner
4 is the abuser and the original respondent is the victim of
5 domestic violence and may issue an ex parte temporary order for
6 protection in accordance with Section 12A.06.170 on behalf of
7 the victim until the victim is able to prepare a petition for an
8 order for protection in accordance with Section 12A.06.160.

9 E. Except as provided in subsection D of this section, no
10 order for protection shall grant relief to any party except upon
11 notice to the respondent and hearing pursuant to a petition or
12 counter-petition filed and served by the party seeking relief in
13 accordance with Section 12A.06.160C.

14 F. The court order shall specify the date the order
15 expires if any. The court order shall also state whether the
16 court issued the protection order following personal service,
17 ((or)) service by publication or service by mail and whether the
18 court has approved service by publication or mail of an order
19 issued under this section.

20 G. If the court declines to issue an order for protection
21 or declines to renew an order for protection, the court shall
22 state in writing on the order the particular reasons for the
23 court's denial.

24 H. Nothing in this section may affect the title to real
25 estate; provided that judgment for costs or fees shall
26 constitute a lien on real estate to the extent provided in RCW
27 Chapter 4.56.

28 Section 4. Section 12A.06.170 of the Seattle Municipal
Code (Ordinance 111857 § 5, as last amended by Ordinance 117673
§ 5) is further amended as follows:

12A.06.170 Ex parte temporary protection orders.

A. Where an application under this section alleges that
irreparable injury could result from domestic violence if an

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1 order is not issued immediately without prior notice to the
2 respondent, the court may grant an ex parte temporary order for
3 protection, pending a full hearing, and grant relief as the
4 court deems proper, including an order:

5 1. Restraining any party from committing acts of
6 domestic violence; and

7 2. Restraining ((Excluding)) any party from going
8 onto the grounds of or entering the dwelling that the parties
9 share, from the residence, workplace or school of the other or
10 from the day care or school of a child ((shared or from the
11 residence of the other)) until further order of the court;

12 3. Restraining any party from interfering with the
13 other's custody of the minor children or from removing the
14 children from the jurisdiction of the court;

15 4. Restraining any party from having any contact
16 with the victim of domestic violence or the victim's children or
17 members of the victim's household;

18 5. Considering the provisions of Section 12A.06.195.

19 B. Irreparable injury includes but is not limited to
20 situations in which the respondent has recently threatened
21 petitioner with bodily injury or has engaged in acts of domestic
22 violence against the petitioner.

23 C. The court shall hold an ex parte hearing in person or
24 by telephone on the day the petition is filed or on the
25 following judicial day.

26 D. An ex parte temporary order for protection shall be
27 effective for a fixed period not to exceed fourteen (14) days,
28 or twenty-four (24) days if the court has permitted service by
publication under RCW 26.50.085 or by mail under RCW 26.50.123
((Washington Laws of 1995, chapter 246, section 15)). The ex
parte order may be reissued. A full hearing shall be set for
not later than fourteen (14) days from the issuance of the
temporary order or not later than twenty-four (24) days if

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1 service by publication or by mail is permitted. Except as
2 provided in Section 12A.06.160C, RCW 26.50.085, and RCW
3 26.50.123 (~~Washington Laws of 1995, chapter 246, section 15~~),
4 the respondent shall be personally served with a copy of the ex
5 parte order along with a copy of the petition and notice of the
6 date set for the hearing.

7 E. Any order issued under this section shall contain the
8 date and time of issuance and the expiration date and shall be
9 entered into a state-wide judicial information system by the
10 clerk of the court within one (1) judicial day after issuance.

11 F. If the court declines to issue an ex parte temporary
12 order for protection, the court shall state the particular
13 reasons for the court's denial. The court's denial of a motion
14 for an ex parte order for protection shall be filed with the
15 court.

16 Section 5. Chapter 12A.06 of the Seattle Municipal Code
17 (Ordinance 102843, as amended) is further amended by adding the
18 following section:

19 **12A.06.187 Interfering with the reporting of domestic**
20 **violence.**

21 A. A person commits the crime of interfering with the
22 reporting of domestic violence if the person:

23 1. commits a crime of domestic violence, as defined
24 in Section 12A.06.120; and

25 2. prevents or attempts to prevent the victim of or
26 a witness to that domestic violence from calling a 911 emergency
27 communication system, obtaining medical assistance or making a
28 report to any law enforcement official.

B. Commission of a crime of domestic violence under
subsection A of this section is a necessary element of the crime
of interfering with the reporting of domestic violence.

C. Interfering with the reporting of domestic violence is
a gross misdemeanor.

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Section 6. Section 12A.06.195 of the Seattle Municipal Code (Ordinance 117157 § 1) is amended as follows:

12A.06.195 Court order requiring surrender of firearm, dangerous weapon or concealed pistol license.

A. In this section, the following definitions apply unless a different meaning plainly is required:

1. "Dangerous weapon" means a dagger, dirk, spring blade knife, knife the blade of which is automatically released by a spring mechanism or other mechanical device, knife having a blade which opens, falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement and any instrument or weapon of the kind usually known as a slungshot, sand club or metal knuckles.

2. "Felony" means any felony offense under the laws of this state or any federal or out-of-state offense comparable to a felony offense under the laws of this state.

3. "Firearm" means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

~~((3. "Serious offense" means any of the following felonies or felony attempt to commit any of the following felonies, as now existing or hereafter amended: class A felony; criminal solicitation of class A felony; conspiracy to commit class A felony; manslaughter in the first degree; manslaughter in the second degree; indecent liberties; rape in the second degree; kidnapping in the second degree; arson in the second degree; assault in the second degree; assault of a child in the second degree; extortion in the first degree; burglary in the second degree; robbery in the second degree; child molestation in the second degree; controlled substance homicide; incest when committed against a child under age fourteen (14); leading organized crime; promoting prostitution in the first degree; rape in the third degree; sexual exploitation; vehicular assault; vehicular homicide when proximately caused by the driving of any vehicle by any person while under the influence~~

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1 ~~of intoxicating liquor or any drug as defined by RCW 46.61.502~~
2 ~~or by the operation of any vehicle in a reckless manner; any~~
3 ~~other class B felony with a finding of "sexual motivation" as~~
4 ~~defined under RCW 9.94A.030; any other felony with a deadly~~
5 ~~weapon verdict under RCW 9.94A.125; any felony offense in effect~~
6 ~~at any time prior to the effective date of this section that is~~
7 ~~comparable to a serious offense; or any federal or out-of-state~~
8 ~~conviction for an offense that under the laws of this state~~
9 ~~would be a serious offense.))~~

10 B. When entering an order authorized under Section
11 12A.06.040, 12A.06.130, 12A.06.165 or 12A.06.170 and upon a
12 showing by either clear and convincing evidence or a
13 reponderance of the evidence, but not by clear and convincing
14 evidence, that a party has used, displayed, or threatened to use
15 a firearm or dangerous weapon in a felony ((serious offense)),
16 that a party has previously committed any offense making the
17 party ineligible to possess a firearm under the provisions of
18 RCW 9.41.040 or that a party's possession of a firearm or
19 dangerous weapon presents a serious and imminent threat to
20 public health or safety or to the health or safety of any
21 person, the court shall:

- 22 1. Require the party to surrender any firearm or
23 dangerous weapon;
- 24 2. Require the party to surrender any concealed
25 pistol license issued under RCW 9.41.070;
- 26 3. Prohibit the party from obtaining or possessing
27 a firearm or dangerous weapon;
- 28 4. Prohibit the party from obtaining or possessing
a concealed pistol license.

29 C. The court may order temporary surrender of a firearm
30 or dangerous weapon without notice to the party if it finds, on
31 the basis of the moving affidavit or other evidence, that
32 irreparable injury could result if an order is not issued until

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the time for a response has passed.

D. The requirements and prohibitions of subsections B and C of this section may be for a period of time less than the duration of the order.

E. The court may require the party to surrender any firearm or dangerous weapon in or subject to the party's immediate possession or control to the King County Sheriff, the Seattle Chief of Police, the party's counsel or any person designated by the court.

Section 7. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 8. This ordinance shall take effect and be in force on June 6, 1996.

Passed by the City Council the 29 day of April, 1996, and signed by me in open session in authentication of its passage this 29 day of April, 1996.

Jan Drago
President of the City Council

Approved by me this 3 day of May, 1995.

Marwan B. Elie
Mayor

Filed by me this 3 day of May, 1996.

Joseph E. Pappini
City Clerk

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M E M O R A N D U M

TO: Honorable Jan Drago
President, Seattle City Council

FROM: Mark H. Sidran *MHS*

RE: Proposed Ordinance Relating to Domestic Violence

DATE: April 11, 1996

As indicated below, this proposed ordinance contains some provisions which are required by state law and some that are discretionary. These provisions correspond to state legislation intended to improve the operation of the state's domestic violence laws and enhance the protection of victims.

Procedural changes. Discretionary. Section 1 clarifies a confusing definition. Section 2 requires a person seeking a domestic violence protection order to disclose to the court the existence of other such orders between that person and the person sought to be restrained. Section 3 authorizes service by mail of a petition for renewal of a domestic violence protection order. The 1995 Legislature authorized service by mail of the original petition for a domestic violence protection order. See SMC 12A.06.160C; RCW 26.50.050. Section 4 expands the scope of a temporary domestic violence protection order to include prohibiting a person from going onto the yard of the petitioner's dwelling or the petitioner's workplace or school or the school or day care of the petitioner's child. While these procedural changes are not required to be adopted by the City, the Council is strongly urged to do so to make our domestic violence laws more effective.

Interfering with the Reporting of Domestic Violence. Discretionary. Section 5 creates the gross misdemeanor of Interfering with the Reporting of Domestic Violence, defined as committing a domestic violence crime and then trying to prevent the victim or a witness from calling the police or a medic. The maximum punishment is 1 year in jail and a \$5,000 fine. Although not required to be adopted, the Council is strongly urged to do so to enhance victim safety.

Court's authority to order surrender of firearm or concealed pistol license Required. Section 6 authorizes a court, in issuing a domestic violence no contact order or protection order, to require the person restrained to surrender a firearm, dangerous weapon or concealed pistol license and to prohibit the person from obtaining a firearm, dangerous weapon or concealed pistol license. Although no contact/protection orders are usually issued by district or superior court rather than Municipal Court, probation conditions in City criminal cases can include such orders (as part

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Honorable Jan Drago
April 11, 1996
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of the "penalty" for the crime) and therefore city law should be made uniform with state law in this regard.

MHS:lm

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TIME AND DATE STAMP

SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY
THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

June B. Bond

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO: _____

PRESIDENT'S SIGNATURE

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STATE OF WASHINGTON - KING COUNTY

67837
City of Seattle, City Clerk

-SS.

No. ORD IN FULL

City of Seattle

ORDINANCE 118107

AN ORDINANCE relating to domestic violence, amending Sections 12A.06.120, 12A.06.160, 12A.06.195 and adding a section to the Seattle Municipal Code.

BE IT ORDAINED BY THE CITY OF SEATTLE AND

Section 1. Section 1.

Code (Ordinance 10284)

Ordinance 117673 § 1)

12A.06.120. Do

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Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:ORD 118107

was published on

05/10/96

The amount of the fee charged for the foregoing publication is the sum of \$, which amount has been paid in full.

Subscribed and sworn to before me on

05/10/96

Notary Public for the State of Washington,
residing in Seattle

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Affidavit of Publication